

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7741

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MARK BENJAMIN HEMPHILL,

Defendant - Appellant.

Appeal from the United States District Court for the District of
South Carolina, at Columbia. Dennis W. Shedd, District Judge.
(CR-99-659)

Submitted: March 6, 2003

Decided: March 13, 2003

Before WILKINSON, MICHAEL, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Mark Benjamin Hemphill, Appellant Pro Se. Marshall Prince, OFFICE
OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Mark Hemphill seeks to appeal the district court's denial of his "Motion to Correct and/or Reduce Sentence" pursuant to Fed. R. Crim. P. 35(b). We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Movants are accorded ten days after the entry of the district court's final judgment or order to note an appeal in criminal cases. Fed. R. App. P. 4(b)(1); United States v. Breit, 754 F.2d 526, 528 (4th Cir. 1985) (applying ten-day appeal period to Rule 35 motion).

The district court's order denying Rule 35 relief was entered on the docket on October 22, 2002; the ten-day appeal period expired on November 1, 2002. Under Houston v. Lack, 487 U.S. 266 (1988), the earliest date we may consider Hemphill filed his notice of appeal is November 5, 2002. Because Hemphill failed to file a timely notice of appeal or to obtain an extension of the appeal period, we dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED